



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2011-0081; FRL-9609-4]

RIN 2060-AQ69

Revisions to Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to amend the preamble and rule text to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station (Portland) published November 7, 2011, to revise minor misstatements. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) in the State of New Jersey, and not in specific counties within the state. These revisions have no impact on any other provisions of the rule.

DATES: The direct final rule is effective on **[INSERT DATE 90 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives adverse comment by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives an adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0081, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2011-0081.

- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2011-0081.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2011-0081, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.
- Hand Delivery: EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2011-0081, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 3334, Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2011-0081. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information

about the EPA's public docket, visit the EPA Docket Center homepage at

<http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in

www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Hawes (919) 541-5591, hawes.todd@epa.gov, or Ms. Gobeail McKinley (919) 541-5246, mckinley.gobeail@epa.gov, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA using a direct final rule?

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I. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment since the changes will not affect the emission limits, increments of progress, compliance schedules, or the reporting provisions specified in the November 7, 2011, final rule. However, in the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to amend the preamble and regulatory text to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Specific Revisions

The preamble and rule text to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station (See FR 76 69052) contain minor misstatements that the EPA is revising in this action. In the preamble section IV.A, Summary of the Modeling for the Proposed Rule, the EPA inadvertently referred to four specific counties in New Jersey when discussing violations of the 1-hour SO₂ NAAQS. The statement reads, “The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO₂ NAAQS in Morris, Sussex, Warren and Hunterdon Counties in New Jersey.” This conclusion is not correctly stated as the EPA’s modeling did not separately examine air quality in each of the four

counties identified. A more accurate description of the EPA's conclusion was presented in the April 7, 2011, proposal which did not refer to those counties in our explanations of the modeling results. Furthermore, between proposal and promulgation, the EPA did not separately examine each of the four counties identified, so in the final rule there was no reason to change this proposed description to specifically list counties. Therefore, we are now revising the statement in the November 7, 2011, final rule preamble to be consistent with the description in the April 7, 2011, proposal by removing the references to Morris, Sussex, Warren, and Hunterdon Counties. The statement will now read, "The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO₂ NAAQS in New Jersey."

Similarly, in the rule text, Part 52-[Amended], Subpart NN-Pennsylvania, section 52.2039 in 40 CFR part 52, of the final rule, the EPA inadvertently referred to those same four counties in describing the finding of significant contribution to nonattainment and interference with maintenance of the 1-hour SO₂ NAAQS. The provision reads, "The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO₂) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO₂ national ambient air quality standard (NAAQS) in Morris, Sussex, Warren, and Hunterdon Counties in New Jersey." We are revising the rule text so that it now reads, "The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO₂) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO₂ national ambient air quality standard (NAAQS) in New Jersey."

Although the New Jersey Department of Environmental Protection (NJDEP) modeling analysis submitted with the September 2010 petition identified NAAQS violations at receptors in certain counties, the purpose of the EPA modeling was not to identify or corroborate the entire geographic footprint of the violations in New Jersey. The EPA modeling analysis was conducted for the purpose of corroborating the existence of NAAQS violations in New Jersey caused by Portland and for determining the remedy needed to eliminate all NAAQS violations caused by Portland. The EPA modeling thus focused upon identifying only the area where the maximum concentration was expected to occur. We used the same receptor grid for the final rule as for the proposed rule, which was focused on the area of maximum impacts occurring in Warren County, New Jersey. The remedy was determined by assessing the emission reduction needed to eliminate the maximum modeled violation in New Jersey, which occurs in close proximity to Portland in Warren County. There was no need to make an assessment of impacts at all locations within New Jersey since eliminating the NAAQS violations at the highest impacted receptor provided the basis for the remedy which, by its nature, would eliminate all modeled violations caused by Portland in the entire state. Therefore, the EPA finding pursuant to section 126 of the Clean Air Act (the Act) applies to New Jersey generally. The revision finalized in this rule is consistent with NJDEP's request for a finding that emissions from Portland significantly contribute to nonattainment or interfere with maintenance of the 1-hour SO₂ NAAQS in New Jersey. The revision is also consistent with the language in sections 110 and 126 of the Act which is phrased such that the petitioner can request a finding that a source in one state is significantly contributing to nonattainment or interfering with maintenance of the NAAQS in another state. The addition of the counties was neither necessary nor intentional and did not arise from a request from the petitioner or any other commenter.

The revision finalized in this rule will not affect the emission limits, increments of progress, compliance schedules, or the reporting provisions specified in the November 7, 2011, final rule. No adjustments to the existing modeling or other technical analyses and no new analyses were necessary to

make the revisions. Accordingly, we are publishing this direct final rule because we view this as a noncontroversial action and anticipate no adverse comment. The revisions do not change the conclusions that the EPA made in the final rule. Therefore, the EPA is not revising any other aspect of the rule published on November 7, 2011.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action simply revises minor wording errors in the November 7, 2011 rule. This action corrects a response to a petition that is narrow in scope and affects a single facility. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this rule under section 126 of the CAA will not in-and-of itself create any new information collection burdens but simply revises minor wording errors in the November 7, 2011, rule. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR

121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The revisions in this notice do not impose any new requirements on small entities. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action includes minor wording revisions to the November 7, 2011, final rule in this notice that are not expected to exceed \$100 million or more for state, local, and tribal governments, in aggregate, or the private sector in any 1 year. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Again, this action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The November 2011 rule primarily affects private industry, and does not impose significant economic costs on state or local governments. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have a substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian Tribes. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and

adverse human health or environmental effects on any population, including any minority or low-income population. This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Nonetheless, this action will be effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the Federal Register. Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial

review nor does it extend the time within which a petition for judicial review must be final, and shall not postpone the effectiveness of such action.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 14, 2011

Lisa P. Jackson,
Administrator.

For the reasons set forth in the preamble part 52 of chapter I of title 40 of the Code of Federal regulations are amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania [Amended]

2. Section 52.2039 is amended by revising the introductory text to read as follows:

§52.2039 Interstate transport.

The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO₂) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO₂ national ambient air quality standard (NAAQS) in New Jersey. The owners and operators of Portland shall comply with the requirements in paragraphs (a) through (d) of this section.

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